IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Cause No. FSD 270 OF 2021 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)
AND IN THE MATTER OF GLOBAL FIXED INCOME FUND I LIMITED

B E T W E E N:

CREDIT SUISSE LONDON NOMINEES LIMITED

Petitioner

-v-

GLOBAL FIXED INCOME FUND I LIMITED

First Respondent

-and-

FLOREAT INVESTMENT MANAGEMENT LIMITED

Second Respondent

-and-

ABDUL KHALEK JALLAD
KARIMA SHAKER
SHERIN SHAKER
MARIE-LOUISE STOFFEL

Intervenors (Series 7 Investors)

-and-

HIS HIGHNESS SHEIKH RASHID BIN HUMAID AL NUAMI
HIS HIGHNESS SHEIKH AMMAR BIN HUMAID AL NUAMI
HIS HIGHNESS SHEIKH HUMAID AL NUAMI

Intervenors (Series 8 Investors)

IN OPEN COURT

Appearances:

Mr Stephen Rubin KC, Mr David Lee and Mr David Lewis-Hall of Appleby (Cayman) Limited for the Petitioner

Mr Peter Tyers-Smith, Ms Ilona Groark and Mr Sebastian Gollins of Kobre & Kim (Cayman) for the Series 8 Investors

Ms Laura Hatfield and Mr Norberto Ayala Rodriguez of Bedell Cristin for the Series 7 Investors

Mr Ben Valentin KC, Mr Sam Dawson and Mr Jason Mbakwe of Carey Olsen for the Joint Provisional Liquidators ("JPLs")

Mr Michael Bloch KC, Mr Ben Hobden and Mr Alan Quigley of Forbes Hare for the Second Respondent

Before: The Hon. Justice Kawaley

Heard: 26 July 2023

Date of decision: 31 July 2023

Draft Reasons circulated: 14 August 2023

Reasons Delivered: 18 August 2023

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Identity of joint official liquidators-incumbent joint provisional liquidators supported by minority stakeholders-alternative official liquidators proposed by majority stakeholders-apparent lack of independence- legal test-correct approach

REASONS FOR DECISION

Introductory

1. On 26 July 2023, I heard full argument on the question of whether the JPLs, Cosimo Borrelli of Kroll (H&K) Limited and Mitchell Mansfield of Kroll (Cayman) Ltd, should be appointed as Joint Official Liquidators ("JOLs") of the First Respondent ("GFIF") as proposed by the Petitioner. The Series 8 Investors proposed alternative candidates, broadly on independence grounds. They were supported in this regard actively by the Series 7 Investors and, more passively (for obvious tactical reasons) by the Second Respondent.

2. In opening the application, the Petitioner's counsel referred the Court to the draft Order which had been submitted in advance of the hearing and invited the Court to make an Order in terms of the draft. In responding to these submissions, counsel for the Series 7 and 8 Investors addressed the merits of the appointment issue, but not the form of the Petitioner's proposed Order which dealt with the terms of the JPLs' appointment as JOLs and costs. On 31 July 2023, I granted an Order in terms of the draft Order and indicated I would provide reasons for my decision as soon as possible. These are the reasons for that decision.

3. Having signed the Order, counsel for the Series 7 and 8 Investors protested that they had expected to be heard as to the terms of the JPLs' appointment as JOLs and costs in the usual way after the present Judgment had been delivered. While I consider it was technically correct for me to infer from the lack of opposition to the form of Order at the hearing that there was tacit consent to its contents including the provisions as to costs, it is on reflection understandable that counsel opposing the merits of the application reasonably expected an opportunity to be heard as to costs as an issue which is generally dealt with after the Court's decision has been delivered. Facing an imminent unscheduled trip, I was perhaps unduly keen to avoid another hearing. Substantive justice should always trump technical form. I will accordingly hear counsel under the liberty to apply provisions as to costs if required.

History of the proceedings

4. The JPLs were appointed in respect of GFIF on 17 September 2021 in this matter, as well as in relation to two other Cayman funds in FSD 268 of 2021 and FSD 269 of 2021, Principal Investing Fund I Limited ("PIF") and Long View II Limited ("Long View"). On 22 October 2022, it was

directed that the three matters should be heard together. On 23 July 2023, Mr Borrelli was reappointed as one of the two JPLs of the BVI fund under common management with the Cayman funds ("RAGOF"). The applications were all made in practical terms by Mr Bruno Wang, the majority investor in all of the funds except for GFIF.

5. The Series 8 Investors are the majority investors in GFIF, holding a 52.8% stake and are aligned for present purposes with the Series 7 Investors whose stake is 13.8%. Mr Wang, who was initially the majority investor, now holds a not insignificant 33.7 % interest. The Series 8 Investors fairly point out that it was unusual for the JPLs to be appointed ex parte without notice to the majority investor in GFIF. However, this point is of historical interest only. The evidence referred to in the course of the present hearing demonstrated beyond serious argument that the Series 8 registered shareholder was given notice of the JPLs' appointment on or about 26 October 2021. As Mr Rubin KC put it, they deliberately chose to do nothing.

6. A Winding-Up Order was made on an unopposed basis in respect of GFIF on 14 June 2023. A further hearing was directed on the question of the identity of JOLs. Accordingly, the sole question requiring determination was whether the normal incumbency principle should apply or whether there were grounds for appointing alternative JOLs.

Governing legal principles

7. The incumbency principle upon which the Petitioner relied has been most authoritatively articulated in the following way in a decision of the Privy Council on appeal from the Cayman Islands Court of Appeal. In *Parmalat Capital Finance Limited-v- Food Holdings Limited and Dairy Holdings Limited* [2008] CILR 202, Lord Hoffmann held as follows:

> "*12. Finally, there is the question of whether the judge should have appointed the Cayman liquidators rather than the candidates proposed by other creditors. That is very much a matter of discretion and where, as in this case, the exercise of the discretion has been upheld by the local Court of Appeal, it would be very unusual for the Board to interfere. In considering the views of creditors, the judge discounted the views of other members of the Parmalat group which held intra-group indebtedness. There is ample authority for doing so: see, for example, Re Falcon RJ Developments Ltd (1987) 3 BCC 146. He gave some weight to the fact that the Cayman liquidators had been in office for*

> *nearly three years and the delay and expense which would be caused if new liquidators were to take over. These too were proper matters to be taken into account.*
>
> *13. The consideration to which Mr Moss says he did not give sufficient weight was the conflict of interest between the position of the Cayman liquidators as liquidators of Food and Dairy on the one hand and of PCFL on the other. It is not unusual for the same liquidators to be appointed to related companies, even though the dealings between them may throw up a conflict of interest. It avoids the expense of having different liquidators investigate the same transactions. The attitude of the court has been that any conflicts of interest can be dealt with by the court (on the application of the liquidators) when they arise: see Re Arrows Ltd [1992] BCC 121; Re Maxwell Communications Corporation plc [1992] BCC 372.*" [Emphasis added]

8. Both the Cayman Islands Court of Appeal and the Privy Council upheld the decision of Henderson J at first instance [2006] CILR 171 who had ruled that:

> "26. [The proposed appointees] *would necessarily have to repeat a fair bit of the work already done by the present JPLs. This consideration is present at the hearing of most disputes about the identity of official liquidators, and will ordinarily incline the court to confirm the present incumbents in their roles. Absent clear and cogent reasons for doing otherwise, it is only sensible to appoint as JOLs those who have already been installed as JPLs for a substantial period of time.*" [Emphasis added]

9. More recently, Norris J in *Green and another v SCL Group Ltd and others* [2019] 2 BCLC 664. described the appointment of incumbent office holders as permanent liquidators as the "*conventional course*" (at paragraph 91)[1] As I indicated in the course of the hearing, the bar for deciding whether to appoint alternative JOLs to the JPLs ought in principle to be lower than the bar for removing a liquidator at any stage for cause. It may well be that the test for removal would properly apply when all the relevant stakeholders seek the continuance of a provisional appointment. Here the majority stakeholders have mounted opposition to the JPLs being appointed on a permanent basis. This must lower the bar to some extent.

[1] Although the incumbents in that case were Administrators, the predominant practice in relation to provisional liquidators is in my experience no different. This phrase was erroneously attributed to Parker J in a local case in the draft of this Judgment circulated for editorial corrections.

10. However, even in the present context, in my judgment there is at least a starting assumption that the JPLs should be allowed to continue unless there are "clear and cogent" reasons for appointing alternative JOLs. It must be remembered of course that the majority stakeholders have sat on their hands for almost 2 years while the JPLs have been progressing the provisional liquidation. In these circumstances and having regard to established liquidation practice in this jurisdiction, I decline to accept that the JPLs ought to have played a more limited "holding" role. The contrary submissions of Mr Tyers-Smith for the Series 8 Investors were not supported by any relevant persuasive authority. It was too late by the time the present application was heard for the Court to entertain arguments, which might have been advanced on the return date of the Ex Parte Summons for the appointment of the JPLs in March 2022, as to what the scope of the provisional liquidation should be.

11. The present context was also clearly distinguishable from the situation where the Court was forced to choose between the Management Shareholder's desire for an incumbent voluntary liquidator to be appointed and the majority investor's wish for its nominees to be appointed as the initial official liquidators. Mr Tyers-Smith nonetheless invoked the following principles he extracted from my own decision (in that different context) in *Sciens Alternative Assets Recovery Fund II (In Voluntary Liquidation)*, FSD 382/2021 (IKJ), Judgment dated 29 June 2022 (unreported) which I accepted as suitably general in their scope to be applicable to the present case:

> "*37.1 in a de facto solvent liquidation, management shareholder interests are relegated below those of stakeholder interests (ibid para 12);*
>
> *37.2 economic stakeholders' wishes as to the identity of official liquidators should ordinarily prevail in relation to a company's winding-up (ibid para 13 having cited Sir Richard Field in Adamas Asia Strategic Opportunity Fund Limited (et al) [2020 (1) CILR 134] at 118);*
>
> *37.3 the views of the majority stakeholders are in principle always potentially entitled to considerable deference (Sciens para 21(a));*
>
> *37.4 the Court will not assess majority stakeholder views uncritically and such views must always pass a minimum objective validity test. Where the position contended for by the*

majority stakeholder(s) is objectively reasonable, the starting assumption will be that the wishes of the majority should prevail (ibid para 21(b));

37.5 the general rule is that economic stakeholders are the best judges of where their best commercial interests lie although there may be exceptional cases where commercial actors are demonstrably pursuing a litigation strategy for collateral purposes unconnected to legitimate commercial objectives (ibid para 21(c));

37.6 factors such as impartiality, the relevance of incumbency and the importance of knowledge acquired in other related appointments are unlikely to carry the same evaluative weight in each and every case. What considerations are pivotal will inevitably require an appraisal of the particular circumstances of each case (ibid 21(d));

37.7 deciding who the official liquidators should be must ultimately be guided by where the best interests of the relevant stakeholders as a whole appear to the Court to lie (ibid 21(e))." [Emphasis added]

12. Both the Series 8 Investors' and the Series 7 Investors' main ground of challenge to the JPLs was an alleged appearance of a lack of independence on the JPLs' part. Reliance was placed on various passages in Doyle J's Judgment in *In the matter of Global Fidelity Bank, Ltd (In Voluntary Liquidation)* (Unreported, FSD 168 of 2021 (DDJ)), Judgment dated 20 August 2021). I found the following passage (at paragraph 77 (13)) to be pivotal and adopted it for the purpose of adjudicating the present application:

"*… whether or not any kind of personal, professional or economic relationship and prior involvement with the target company would lead to the conclusion that a practitioner cannot be properly regarded as independent from such company either in reality or in perception depends upon the factual circumstances of each case. As the previous case law makes plain, the court is engaged in a 3-stage process. The task of the court is first to identify the factual circumstances of the relationship and prior involvement and then secondly, to come to a conclusion as to whether its existence and the circumstances of the case are such that they are capable of impairing the appearance of independence. Perception is just as important as reality in these cases. Thirdly, if the court reaches such a conclusion, the court then needs to come to a conclusion as to whether it is sufficiently*

material to the liquidation in question that a fair-minded stakeholder would reasonably object to the appointment of the nominated practitioner in question. I note the comment of Jones J in Hadar at paragraph 17 that it is 'not good enough to say that these particular individuals can be relied upon to perform their duties properly but in my judgment a fair-minded stakeholder would also be well informed and aware that once appointed JOLs act as officers of the court and have duties to act in the best interests of all the company's stakeholders irrespective of who sought their appointment."

13. Accordingly, the present case was one in which:

(a) there was a starting assumption that absent cogent reasons the JPLs should be appointed as JOLs;

(b) the views of the majority investors who sought alternative appointments deserved considerable deference;

(c) the concerns of the majority were subject to a minimum objectivity test; and

(d) in assessing whether there is an appearance of a lack of independence based on the alleged pre-existing partiality of the JPLs towards Mr Wang's interests, the key question is whether a fair-minded stakeholder would reasonably object to the proposed appointment.

Findings: the merits of the objections

The objections

14. The Series 8 Investors advanced the following arguments that required at least some evaluation because they were potentially relevant to the identity of the JOLs:

(a) the Petition was presented with a view to advancing Mr Wang's interests only;

(b) because the fraud from inception complaint was not pursued, the importance and/or scope of the need for an investigation was diminished;

(c) there is an obvious need for different office holders in relation to the Wang Funds (referring to PIF, and RAGOF and the present Fund;

(d) the aggregation of the various Funds in the Petition and the way the provisional liquidation was conducted created an appearance of primacy being given to Mr Wang's interests;

(e) the JPLs' work had focussed on Mr Wang's interests;

(f) the JPLs' work in relation to the Plumstead Loan and the RAGOF loans, *inter alia* created an impression of priority being given to Mr Wang's interests and the potential for conflicts existed; and

(g) the WhatsApp communications between Mr Pearson and Mr Borrelli which were disclosed during the hearing of the Petitions were explained as innocent "banter" add to the above concerns.

15. The Series 7 Investors complained of a lack of independence based on the following matters which required evaluation:

(a) the setting aside of *ex parte* orders appointing receivers and JPLs in BVI in the RAGOF matter;

(b) evidence adduced in the present proceedings about the relationship between Mr Wang, the receivers and the JPLs;

(c) disparate enforcement actions taken in relation to loans to the Series 7 Investors and Mr Wang (the Plumstead Loan); and

(d) a good relationship with Floreat is indispensable for an effective liquidation. The JPLs' relationship with Floreat has broken down.

The Petition was presented to advance Mr Wang's interests only/the aggregation of the Funds in the Petition gave an impression of primacy being given to Mr Wang's interests

16. These complaints could potentially have been raised as objections to a winding-up order being made but were not in any direct sense relevant to the identity of the JOLs. The motives of the Petitioner in presenting the Petition and how it was drafted looked back to the past. The question was, looking forward, who should be appointed to manage the winding-up. Of course, these complaints were really used as a preface for the more apposite complaint (if valid) that the JPLs had demonstrated a propensity for advancing the interests of one stakeholder in preference to the interests of the others.

The importance of the need for an investigation ground was diminished by the abandonment of the fraud from inception point

17. This point would likely not have been advanced had the hearing of the Petitions not to a significant extent taken place in private hearings the Series 8 and 7 Investors as non-parties did not attend. I encouraged the Petitioner to abandon that point in the grounds of economy on the express basis that it was easier to establish the need to investigate, *inter alia*, whether or not the Funds were a fraud from inception than it was to establish such a fraud as a ground for winding-up. The need for an investigation accordingly clearly had an increased rather than a narrower ambit by the time the Winding-Up Order was made and the accumulated knowledge the JPLs had acquired was quite obviously undiminished by the Petitioner's narrowing of its pleaded grounds.

There is an obvious need for different office holders in respect of GFIF

18. This point lacked force at first blush simply because well-resourced civil litigants very rarely fail to take obvious points at the earliest possible opportunity. It accordingly beggared belief that the Series 8 Investors with their majority stake would not have acted promptly to seek the appointment of different JPLs if this was obviously indispensable to the protection of their commercial interests. This point was dispositively undermined by Lord Hoffmann's observations about the acceptability of common appointments in respect of related companies (notwithstanding potential conflicts of interest) in *Parmalat Capital Finance Limited-v- Food Holdings Limited and Dairy Holdings Limited* [2008] CILR 202 (at paragraph 13). I was satisfied by the end of the hearing that no conflicts incapable of resolution in the course of the liquidation were likely to arise.

The JPLs work had given primacy to Mr Wang's interests and created an impression of priority being given to those interests

19. Both the Series 8 and Series 7 Investors' most significant objections were grounded in the assertions that the JPLs had to date (a) given primacy to Mr Wang's interests and/or (b) created an impression that primacy had been given to those interests. After Mr Rubin KC had romped through these objections in his typically robust manner, I was satisfied that there was no basis to the first limb of these complaints. I reserved judgment to reflect on precisely what the appearance of a lack of independence legal test was and how it ought properly to be applied to the facts of this case.

20. One complaint which Mr Tyers-Smith raised in oral argument deserves brief mention. In his client's trial Skeleton, the point was made that JPLs' Reports are not ordinarily used as evidence as to the merits of a petition. I agree, but the whole purpose of the JPLs' Reports was to inform the Court of the nature and extent of their work and the Court must have been entitled to rely on the fact of their conclusions (as opposed to their truth) in assessing whether or not there was a need for a winding-up to, *inter alia,* investigate the affairs of the Fund. The fact that the Reports might be relied upon for this purpose in part informed my decision to permit the Second Respondent's late collateral purpose amendments early in the trial. In the event, the Winding-Up Order was made without opposition so this point ultimately went nowhere.

21. In the submissions of the Series 8 Investors, complaint was made that the *ex parte* Order appointing the JPLs expressly authorised the JPLs to investigate matters Mr Wang had identified as requiring investigation, such as matters relevant to the fraud from inception point which involved matters occurring before the Series 8 Investors had even invested. In my judgment this is the inevitable consequence of an appointment being made by the Court on the application of one disgruntled contributory. Either:

(a) the complaints are inherently lacking in merit and the majority stakeholders will successfully support the management in dismissing the petition; or

(b) the majority stakeholders will insist on some adjustment being made in the way liquidation costs are allocated at the end of the liquidation to take into account the fact certain costs are entirely attributable to pursuing other stakeholders' commercial interests.

22. I had no difficulty in rejecting this point. More significant and difficult immediately to evaluate was the complaint that paragraph 6(b) of the Appointment Order empowered the JPLs to investigate the propriety of the Series 8 Shares. It was only in his evidence, not in the JPLs' Reports, that Mr Mansfield acknowledged that there appeared to be no irregularity with the allotment of those shares. It was then submitted:

> "*117…That is hardly exoneration or reassuring reading to any well-informed fair-minded investor. On the contrary, it leaves the impression that they remain a target for investigation in the context of Mr Wang's allegations of wrongdoing against the 'Floreat Parties'.*"

23. That was a beguiling submission because it is impossible to deny that any investor would experience discomfiture at the notion that they are likely to be undeservedly the subject of investigation by official liquidators. But the point, carefully scrutinised, self-destructs. Would a "fair-minded" investor oppose the appointment of liquidators who would investigate their own impropriety and expect to see *ex parte* materials which made the case for that investigation? In my judgment they would not, at this stage at least when there is no need to defend themselves against any active allegations. This point comes very close to the position of the Second Respondent who effectively says: "we do not want to be the subject of vigorous investigations".

24. There was ultimately a fundamental inconsistency between consenting to a Winding-Up Order which was made in large part on the grounds that there was a need to investigate allegations of misconduct by the Floreat Parties and complaining that the JPLs, if appointed as JOLs, will continue to carry out those very investigations. I found that this complaint failed the "objective validity" test.

25. The complaints of the giving of priority to Mr Wang's interests advanced by both the Series 8 Investors and Series 7 Investors again were understandable in subjective perception terms. These complaints firstly needed to be viewed in their broader commercial context. The three Cayman Petitions and the one BVI Petition were all presented by Mr Wang's nominee shareholders. Mr Wang was the majority stakeholder in PIF, Long View and RAGOF. He was once the majority stakeholder in GFIF, and now held a significant minority stake. It accords with commercial and legal rationality that JPLs act in furtherance of the interests of the majority stakeholders. That is no more than the law requires. Overall, the JPLs would have been acting improperly in regard to the four Funds, and to a marginally lesser extent the three Cayman Funds, if they did not in practical

terms act to advance primarily "Wang interests". Save for the present Fund, there were no material competing interests.

26. Of course, as Mr Valentin KC for the JPLs pointed out, they were well aware (as regards GFIF and generally) of the need to have regard to the interests of all stakeholders and Mr Mansfield's evidence addressed all criticisms in a satisfactory manner. An illustration of the gap between subjective perception and objective perception came when Mr Valentin KC pointed out that the Series 8 Investors had in fact been given more information about the GFIF provisional liquidation, through a special presentation, than any other investor including Mr Wang.

27. A major focus of criticism was the supposedly cosier approach adopted by the JPLs in relation to the Plumstead Loan to Mr Wang, and corresponding loans to the Series 8 and 7 Investors. Mr Rubin KC pointed out that most of the loan monies were drawn down before the Series 8 Investors had invested so (in circumstances where the Series' interests were managed on a quasi-segregated basis) no conflict arose in real commercial terms. In liquidity terms, there appeared to be differences in the position of Mr Wang and the loans of the other Investors. Further and in event, the Plumstead Loan restructuring had yet to be implemented. I also was satisfied that there was nothing obviously uncommercial about the loan by GFIF to RAGOF on which GFIF is earning interest from which the majority Investors will benefit.

28. Finally, as regards the sweeping proposition that the JPLs have been ignoring the majority stakeholders' interests in the provisional liquidation, it was pointed out that one of the main spheres of activities is the London claim for substantial damages in relation to the Aviation Notes in which Series 8 are the main investors. A reasonable fair-minded investor would not complain about potential recoveries being pursued on their account.

29. Overall, the Series 8 Investors and Series 7 Investors appeared to be consistently straining to identify objectively credible perceptions of lack of independence which ultimately fell short of constituting valid grounds for appointing alternative JOLs in place of incumbents of almost 2 years' standing who were well aware of the potential conflicts and capable of resolving them as they arose.

The evidence adduced in the present proceedings about the relationship between Mr Wang and the JPLs

30. It was unclear to what extent, if any, an attempt was made to rely on the evidence which the Second Respondent threatened to adduce about an alleged pre-liquidation connection between Mr Wang and the JPLs, before they thought better of it. There was no evidence on which any reasonable Court or fair-minded investor was entitled to rely.

31. The Series 8 Investors did make what appeared to me to be a somewhat rhetorical (and possibly 'tongue-in-cheek') complaint about the WhatsApp messages in which Mr Borrelli celebrated a favourable decision from the initially assigned Judge:

> "*169. Finally, as regards the WhatsApp exchange with Mr Borelli* [sic] *concerning the ex tempore written ruling of Doyle J on the ex parte Appointment Order even allowing for banter between fellow professionals as Mr Tariq explains a fair-minded independent investor having paid US $150 million to invest in a Cayman Islands would be entirely justified in taking exception to a communication from a court-appointee to his appointing party which has the appearance of commending his appointing judge for giving a written ruling in favour of that appointing party.*"

32. It is an aberration which reflects well on the probity of Mr Pearson that these private communications were actually disclosed, in response to the legal pyrotechnics of the Second Respondent. It is an entirely normal part of the litigation process for litigants (and lawyers) to heap praise on judges who decide in their favour and to damn those who rule against them with faint praise. Based on my own experience of working with liquidators over many years before joining the Bench, liquidators are no exception in this regard. A fair-minded, reasonable, and worldly-wise investor would surely welcome having their interests represented by an office holder who demonstrated a capacity for enthusiastic engagement with the Court-related aspects of their appointment.

A good relationship with Floreat is indispensable for an effective liquidation. The JPLs' relationship with Floreat has broken down.

33. In her oral submissions, Ms Hatfield, who confirmed her clients' support for the position adopted by the Series 8 Investors, argued that what was needed was JOLs who could resolve the existing

disputes in a consensual manner. The appointment of fresh JOLs could create an opportunity for settlement.

34. This was a very appealing submission, despite the fact that on one view it seemed incongruous in light of the hard-fought way in which the present proceedings and related proceedings overseas have been fought. The wider dispute, primarily between parties who were once fast friends, instinctively seemed eminently suitable for alternative dispute resolution procedures such as mediation. The main reasons why I felt compelled to reject this ground for appointing alternative JOLs as a dispositive argument were:

(a) the Series 7 Investors were admittedly close allies of Floreat Parties. This meant that less weight could be attached to their views as being representative of those of a reasonable well-informed stakeholder; and

(b) I was in no position in the context of the present application to form a view that the JPLs' arguably aggressive litigation and liquidation approach was inconsistent with the best interests of the relevant stakeholders. The law requires the Court to give considerable deference to the professional judgement of the liquidators it appoints, and it would be heretical to substitute the views of parties allied with alleged debtors of the liquidation estate for those of the office holders.

The opposition of the Second Respondent

35. The fact the Second Respondent was unable to resist formally supporting the Series 8 and 7 Investors in the lead up to the application could not be ignored. The Petitioner's Skeleton Argument relied generally on the following observations of Norris J in *Green and another-v- SCL Group Ltd and others* [2019] 2 BCLC 664:

> "*36. When there is a contest over the identity of the liquidator to be appointed I think the guidance as to the exercise of the discretion is well settled:*
>
> *...*
>
> *(d) the liquidator should not be the nominee of the person against whom the company has hostile or conflicting claims or whose conduct in relation to the affairs of the company is under investigation…"*

36. Accordingly, I saw no need to formally consider the written case advanced by the Second Respondent in opposition to the appointment of the JPLs as JOLs. If the scales had been evenly balanced, which in my judgment they were not, the fact that the Second Respondent sought to replace the JPLs would have tipped the scales against their being replaced.

37. Mr Rubin KC submitted that the Series 8 Investors' position could only be rationally explained by their having an overly close relationship with the Floreat Parties. I did not accept that not entirely implausible submission. I was unable to ignore the way in which the Second Respondent initially sought to have the Petition dismissed through making serious allegations of impropriety against the JPLs which were then not pursued without being formally withdrawn. Against this background, making an appointment which the former managers favoured would be a very odd way indeed to conclude the present phase of these proceedings.

The additional costs issue

38. It was common ground that there would be additional costs if alternative liquidators were appointed. I saw no need to resolve the differences between the contending estimates.

Alternative findings: are the alternative nominees Teneo conflicted?

39. The Petitioner objected to the Teneo nominees on the grounds that their recent engagement by the Series 8 Investors meant they lacked the requisite independence. I saw no merit in those objections, applying the independence test which I applied to the JOLs appointment issue. Teneo merely gave limited general advice not incompatible with their discharging the functions of official liquidators. I saw no proper basis for drawing inferences as to the content of that advice from the position the Series 8 Investors adopted in the Further Hearing.

Conclusion

40. For the above reasons on 31 July 2023, I appointed the JPLs as JOLs of GFIF.

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THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT